

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 380 of 2004
with
CIVIL APPLICATION NO.8979 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

CITIBANK N.A.

Versus

ASHIMA LIMITED

Appearance:

1. Appeal from Order No. 380 of 2004
MR MIHIR JOSHI with
MR TANVISH U BHATT for the Appellant
MR S N SOPARKAR, with
MR DEVANG NANAVATI for NANAVATI & NANAVATI for Respondent

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/11/2004

ORAL JUDGEMENT

ADMIT. Notice of admission is waived by Mr

Devang Nanavati for Respondent-Company. With the consent of the parties, the matter is taken up for hearing today.

2 This Appeal from Order is filed by the original defendant of Civil Suit No.2748 of 2004, pending before the City Civil Court, Ahmedabad. The respondent herein has filed the said suit for a declaration and injunction challenging the notice issued by the bank dated 11.10.2004 asking the plaintiff to show-cause as to why the plaintiff-company should not be declared as a wilful defaulter. At the time when such show-cause notice was given the plaintiff went to the City Civil Court by filing the aforesaid suit in which application for interim injunction was also filed. The learned City Civil Judge granted ad interim injunction on 21st October, 2004, which is impugned in this Appeal from Order.

3 At the time of hearing of this Appeal from Order, learned counsel, Mr Mihir Joshi, appearing for the appellant-bank submits that without prejudice to his contentions before this Court that the notice issued by the bank is valid, the bank is willing to give better particulars in support of the notice issued to the company on 11.10.2004. He submitted that such better particulars will be given to the plaintiff-company and the plaintiff-company will be given time to give reply to the same. Mr Soparkar submitted that the moment the company receives such additional particulars, the company shall file reply to the show-cause notice within four week from the date of receipt of such supplementary particulars in support of the original notice. After receiving such reply, Mr Joshi has submitted that the appellant-bank shall proceed further in accordance with law and appropriate decision will be communicated after giving hearing to the opponent-company. It is clarified that in case the ultimate decision is against the respondent-company, it will be open for the plaintiff-company to challenge the same in accordance with law before an appropriate forum.

4 In view of what is stated above, learned counsel Mr Soparkar for the plaintiff-company submits that the original suit may be permitted to be withdrawn as the cause of action may not survive as on today. Accordingly, Civil Suit No.2748 of 2004 pending before Court No.14 of the City Civil Court, Ahmedabad, stands disposed of as withdrawn. Office is directed to send writ of this order so that the trial court may pass the formal order disposing of the suit.

5 In view of what is stated above, ad interim relief granted by the trial court is also vacated. It is clarified that the aforesaid withdrawal of the suit by the plaintiff shall not come in the way of the plaintiff in case the plaintiff is required to initiate any proceedings after the final order is passed by the bank.

6 In that view of the matter, this Appeal from Order is disposed of accordingly as per the order passed herein above. No order as to costs.

In view of the disposal of the main matter, no orders are required to be passed on Civil Application No.8979 of 2004.

(P.B. Majmudar, J.)

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